IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-10-2006

CORAM

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION No.18816 of 2006

K.P.Rajendran .. Petitioner

Vs.

1.The Secretary to Government,
Tamil Development-Culture Department,
Fort Saint George,
Madras-600 009.

2.The Director of Tamil Development,
Kuralagam II Floor,
Madras-600 108.

3.The Tamil Inspection Officer,
Collectorate Campus,
Nagapattinam-611 001. .. Respondents

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Certiorari, to call for the records connected in Memo Na.Ka.No.A3/5756/95 dated 29.5.1995 and Na.Ka.No.A3/5756/95 dated 22.11.1995 of the second respondent and quash the same and include his name in the Panel fit for promotion as Assistant on par with his junior.

For Petitioner : Mr.G.Elanchezhiyan
For Respondents-1to3: Mrs.Geetha Thamarai-selvan,
Government Advocate.

ORDER

The petitioner was originally appointed as Junior Assistant on 15.12.1986. When he was working in the Office of the Assistant Director of Tamil Development, Madurai District, a person by name K.Sathyanarayana Babu, working in the Directorate of Tamil Development at Chennai, got transferred to the place in which the petitioner was working. Consequently, by an order dated 30.9.1993 of the Directorate of Tamil Development, the petitioner was transferred to the Office of the District Tamil Research Officer, Ramanathapuram.

2. However, the said order could not be implemented, on account of the fact that the said K.Sathyanarayana Babu, did not come and join duty at Madurai. Therefore, the petitioner continued at Madurai and as a matter of fact, he was also promoted in the same

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Office, viz., Office of the Assistant Director of Tamil Development Madurai, as Assistant, by the proceedings of the Director dated 15.12.1993.

3. After getting temporary promotion as Assistant, the petitioner gave a representation to the Director on 10.1.1994 requesting the Director to transfer him to the newly created Nagai Quaid-e-Milleth District, in the event of his reversion becoming necessary, due to K.Sathyanarayana Babu reporting for duty at Madurai. It is this letter which has actually triggered a controversy.

4. On the basis of the said letter of the petitioner dated 10.1.1994, the second respondent (Director of Tamil Development) passed an order dated 27.1.1994, transferring the petitioner as Junior Assistant to the Office of the Tamil Inspection Officer, Nagai Quaid-e-Milleth District, on the request of the petitioner.

5. After the petitioner joined duty at Nagapattinam District, a clarification was also issued by the Directorate on 10.6.1994, pointing out that the case of the petitioner was merely one of District transfer and not one of relinquishment of promotion and that the petitioner would be given promotion in accordance with the seniority at the appropriate time.

6. However, by a subsequent proceeding dated 29.5.1995 the person holding charge as the Director of Tamil Development cancelled the previous proceedings dated 10.6.1994. When the petitioner sent a representation, pointing out that such unilateral cancellation of the earlier proceedings was not proper, the second respondent issued an order dated 22.11.1995 holding that the petitioner would be deemed to have relinquished his promotion, by his mere request for a District transfer. After giving an appeal against the said order to the first respondent-Government, the petitioner filed O.A.No.1517 of 1996 on the file of the Tamil Nadu Administrative Tribunal, praying for setting aside the communications dated 29.5.1995 and 22.11.1995 and for the consequential benefit of inclusion of his name in the Panel of persons fit for promotion as Assistants on par with his juniors. On the abolition of the Tribunal, the said application has been transferred to this Court in W.P.No.18816 of 2006.

7. I have heard Mr.G.Elanchezhiyan, learned counsel appearing for the petitioner and Mrs.Geetha Thamaraiselvan, learned Government Advocate appearing for the respondents.

8. The grievance of the petitioner in short is that by his letter dated 10.1.1994, he merely sought a District transfer, but the same has been construed by the second respondent as a relinquishment of promotion. Admittedly, the representation of the petitioner dated 10.1.1994, on translation reads as follows:-

https://hcservices.ecourts.gov.in/hcservices/

"In the event of Thiru K.Sathyanarayana Babu, transferred as Assistant to Madurai assuming

charge, resulting in my reversion, I request for a transfer as Junior Assistant to the newly created Office of the Tamil Inspection Officer, Nagai Quaid-e- Milleth District."

9. Originally, the second respondent (Director of Tami Development) understood the said letter of the petitioner date 10.1.1994 as a letter seeking District transfer. But by the impugne proceedings dated 29.5.1995 and 22.11.1995, the person holdin charge as the Director of Tamil Development, has sought to interpre the said letter as a letter of relinquishment of promotion.

10. Rule 47 of the General Rules for Tamil Nadu State an Subordinate Services, provides for relinquishment of any right by person, entitled to such right or privilege. Rule 47 (1) reads a follows:-

"(1) Any person may in writing, relinquish any right or privilege to which he may be entitled under these rules or the Special Rules if, in the opinion of the appointing authority, such relinquishment is not opposed to public interest; and nothing contained in these rules or the Special Rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished."

11. A bare reading of the aforesaid Rule makes it clea that the relinquishment is to be "in writing" and that th Appointing Authority should form an opinion that such relinquishmen is not opposed to public interest.

12. On a reading of the letter of the petitioner date 10.1.1994, it is not made out that the petitioner had actuall relinquished promotion. On a reading of the Director's proceeding dated 10.6.1994, it is made further clear that the Director neve understood the said letter to be a letter of relinquishment o promotion. The letter dated 10.1.1994 was actually, a letter merel seeking District transfer and not seeking relinquishment o promotion. But by the impugned orders dated 29.5.1995 an 22.11.1995, the letter of the petitioner has been construed as "deemed relinquishment'.

13. Relinquishment has to be in writing and specific. Th Rules do not give any scope for a deemed relinquishment. There ar other provisions contained in the General Rules for Tamil Nadu Stat and Subordinate Services, where a deeming provision is incorporated For instance, under Rule 27, there is a deeming provision in respec of declaration of probation. Under the Tamil Nadu Civil Service (Classification, Control and Appeal) Rules, there is a deemin provision relating to the suspension of a person, who is detained i custody for more than 48 hours. But in so far as relinquishment i concerned, there is no provision for a "deemed relinquishment" Under such circumstances, the impugned orders treating th

https://hcservices.ecourts.gov.in/hcservices/

petitioner as having been deemed to have relinquished his promotio
cannot be sustained and are liable to be set aside.

14. Coming to the consequential relief prayed for by th
petitioner, for inclusion in the Panel for promotion to the post o
Assistant, I find that the Original Application is devoid o
particulars. The petitioner has not furnished any detail about th
names of the juniors who were promoted, overlooking his claim an
the dates on which such juniors were promoted. However, learne
counsel for the petitioner brought to my attention, a seniority lis
dated 14.9.1995 issued by the second respondent in which th
petitioner's name is found at Serial No.28. In the proceedings o
the second respondent bearing Na.Ka.No.A3/3240/95 dated 16.3.1996,
Panel for the year 1996-97 appears to have been prepared, containin
the names of ten persons. In the said Panel, the name of th
petitioner was not found, though the names of his juniors were foun
at Serial Nos.2 to 10.

15. However, it appears that the juniors, whose names wer
found at Serial Nos.2 to 10 in the Panel dated 16.3.1996, were
promoted actually along with the petitioner only on 7.4.1998, by th
proceedings of the second respondent in Na.Ka.No.A3/3870/98-2
Therefore, prima facie, it appears that all the juniors of th
petitioner have been promoted only along with him on 7.4.1998
Hence, no positive direction could be issued in the absence o
details as to which of his juniors were promoted and on what dat
they were promoted. Under such circumstances, leaving the questio
open to the petitioner to agitate, with appropriate details as t
whether in fact, any of his juniors overtook him for promotion, th
writ petition is disposed of setting aside the impugned orders. N
costs.

Svn.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Government,
Tamil Development-Culture Department,
Fort Saint George,
Madras-600 009.

2.The Director of Tamil Development,
Kuralagam II Floor,
Madras-600 108.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3.The Tamil Inspection Officer,
Collectorate Campus,
Nagapattinam-611 001.

ONE CC TO M/S G. ELANCHEZHIYAN, ADVOCATE SR NIO 50635

ONE CC TO G.P., SR NO 50801

WP No.18816 of 2006

30-10-2006

AVM(CO)

BP/7.11

HIGH COURT OF JUDICATURE MADRAS
सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/